IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 752 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRASHANTIBHAI PUNAMCHAND SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 752 of 2002

MR ASHOK K PADIA for Petitioner No. 1

MR R.M.CHAUHAN, APP for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/05/2003

ORAL JUDGEMENT

1. This appeal has been filed against the order dated 25-8-2000 passed by the City Sessions Judge, Court No.1, Ahmedabad in Criminal Case No.204 of 1996 and other

cognate sessions cases, on the application filed by the complainant u/s 452 of the Cri. Pro. Code for return of muddamal amount of Rs.11,900/- which was deposited before the City Sessions Court, Ahmedabad by the police and that amount was credited in the Account of the State Government.

2. Learned Sessions Judge directed by his judgment that muddamal be destroyed. Since muddamal in question was money it could not be destroyed. Learned A.P.P. stated on the basis of the instruction received from the Police Department that the muddamal amount of the appellant has been deposited before the City Sessions Court, Ahmedabad and it was credited in the A/c. of the State Government and the same is lying with the State Government. The application moved by the appellant for return of amount of Rs.11,900/- has been rejected on the ground that the Sessions Judge cannot review his own order except the mathematical error or typing error occurred in the judgment. The claim of the appellant does not come within the purview of the statutory provision for review of the order.

3. Learned counsel for the appellant has contended that the Sessions Judge has issued direction for destruction of the muddamal which includes cash amount of Rs.11,900/-. The appellant has prayed that the said muddamal amount of Rs.11,900/- may be returned to him. It is not denied by the learned A.P.P. that the amount of Rs.11,900/- in dispute belongs to the appellant. If the amount of Rs.11,900/- in dispute belongs to the appellant, then the same is required to be returned to the appellant who is original owner of the muddamal amount u/s 452 of the Cri. Pro. Code. Therefore, the Sessions Judge concerned has erroneously made wrong observation and committed error in giving direction for destruction of the muddamal amount. The Sessions Judge ought to have returned that amount to the original owner of that property which has not been done in the present case. Thus, Sessions Judge has committed error in observing his judgment for destruction of muddamal amount as well as rejecting the application for return of muddamal amount of Rs.11,900/- vide order dated 25-8-2000. Therefore, the appellant is entitled to get back muddamal amount of Rs.11,900/- which belongs to the appellant and the same has been taken in custody by the police from the accused and it was deposited by the police before the City Sessions Court and the same was credited in the A/c of State Government pursuant to the judgment dated 25-8-202.

4. In the facts and circumstances of the case,

consideration the submissions made by the learned counsel for the parties and the material on record, this appeal is allowed and the learned Sessions Judge, City Sessions Court, Ahmedabad is directed to get that muddamal amount of Rs.11,900/- back from the concerned Department of the State Government and return the same to the appellant within a period of one month from the date of presentation of copy of this order. The instruction letter received by the learned A.P.P. is taken on the record of this case.

(Kundan Singh, J.)

/JVSatwara/